IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 3690 (S/S) of 2001
(Old No. 11154 of 1991)

Om Prakash Srivastava
S/o Late Chandra Lal
Conductor
U.P. State Road Transport Corporation
Tanakpur Depot, Nainital.

…….Petitioner

Versus

1. U.P. State Road Transport Corporation, Tanakpur, Nainital, through its Regional Manager.
2. Regional Manager
U.P. State Road Transport Corporation
Tanakpur, Nainital

…….Respondents

Shri M.S. Chauhan, learned counsel for the petitioner.
Shri Rajeev Singh Bisht, learned counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, the petitioner has challenged the order dated 08.03.1991 (copy annexure-6 to the writ petition), whereby the petitioner has been removed from the service.

2. Heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit on record.

3. Brief facts of the case are that the petitioner is a bus Conductor with respondent Corporation. On 11.05.1990, he was on duty in bus registration No. UGP 4282, on its way from Tanakpur to Lucknow. When the bus left Lakhimpur for Gaula (the intervening stations), a checking team, consisting of Shri V.K. Singh Yadav and Shri Harish Chandra Saxena, intercepted the bus and found that with regard to 19 passengers, there was no entry in the way bill. The reported was submitted by the checking party to the authorities and the petitioner was placed under suspension vide order dated 04.06.1990. A departmental enquiry was initiated against him and charge sheet dated 11.06.1990 (copy annexure-2 to the writ petition) was served on the petitioner. The petitioner submitted his reply on 19.07.1990 (copy annexure-3 to the writ petition). After recording of evidence, and hearing, the Enquiry Officer found the petitioner guilty of negligence in not making entry in the way bill. Thereafter a show cause notice (annexure-5 to the writ petition) was served whereafter the impugned order, removing the petitioner from service and withholding the balance of the salary except the subsistence allowance, was passed. Aggrieved by said order, this writ petition was filed before Allahabad High Court on 10.04.1991. The

Allahabad High Court stayed the operation of the impugned order on 27.09.1991 and directed the petitioner to be reinstated. (This writ petition is received by transfer to this Court under Section 35 of U.P. Reorganisation Act, 2000, for its disposal).

4. In the counter affidavit, filed on behalf of the respondents, it is stated that on checking, it was found that the petitioner was taking bus registration No. UGP 4282 on 11.05.1990 with 44 passengers, boarded between Kheri to Gaula and there was no entry in the way bill in respect of 19 passengers out of 44 passengers. It is further stated that the petitioner was given proper opportunity of being heard. It is also stated that there is no illegality in the impugned order, passed by the respondents. Lastly, it is stated that the petitioner should have filed departmental appeal under the service regulations, applicable to him.

5. In the rejoinder affidavit, the averments made in the writ petition are reiterated.

6. Admittedly, the petitioner is a conductor with the respondent corporation and he was on duty in bus registration No. UGP 4282, belonging to Tanakpur Depot and when it was

going from Tanakpur to Lucknow, was intercepted between Kheri and Gaula .

7. Charge against the petitioner is that there was no entry in respect of 19 passengers in the way bill out of the 44 passengers, who were travelling in the bus. The reply given by the petitioner to the authority (copy of which is annexure-3 to the writ petition), shows that in departmental enquiry, the petitioner pleaded that in fact the petitioner distributed the tickets to 19 passengers. It is also clear from the report of checking party that the passengers themselves supported the Conductor at the time of interception and the said party made entry in the way bill relating to the tickets issued from the book of the Conductor. The Enquiry Officer has also mentioned in the enquiry report that had there been no issuance of tickets by the petitioner, the checking party would have issued tickets from the black book, possessed by them. The report of the Enquiry Officer (copy of which is annexure-4 to the writ petition), shows that it is a case of negligence and not of the serious misconduct. In reply to the show cause notice with which the enquiry report was supplied to the petitioner, he has further pleaded that the bus was intercepted when it had not crossed the urban limits, an as such, there was no sufficient

time with the petitioner to make entry in the way bill. In the circumstances, the Enquiry Officer found it to be case of negligence, committed by the petitioner and that he should have stopped the bus and only after making entry in the way bill, the bus should have been permitted to proceed ahead.

8. Had there been finding in the enquiry report that the petitioner for his personal gain has not issued tickets to the 19 passenger, the story would have been different. The enquiry report itself shows that the only fault on the part of the petitioner was that he permitted the bus to run without making complete entries in the way bill. In the enquiry report, it is further mentioned that in the inspection memo, the place of intercepting the bus is not mentioned that is why no intentional act on the part of the petitioner with the motive to make any wrongful gain was found. Since the enquiry report, itself shows that the petitioner's fault was his negligence in making entry in the way bill and not in issuing tickets to the passengers, this Court is of the view that the major punishment awarded by the respondent authorities, appears to be disproportionate to the charge, proved against the petitioner.

9. Therefore, for the reasons as discussed above, this writ petition is allowed. The impugned order dated 08.03.1991, removing the petitioner from service, is quashed. However, respondents are at liberty to pass fresh order of punishment in the light of the observations made in the judgment.

Dt. 23.10.2007 **(Prafulla C. Pant, J.)**
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